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AT LYNCHBURG, VA  
FILED

1/26/2023

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

UNITED STATES OF AMERICA

v.

DEXTER LEE EVANS,

*Defendant.*

CASE No. 6:19-cr-00002

MEMORANDUM OPINION AND  
ORDER

JUDGE NORMAN K. MOON

Before the Court are Defendant's motions seeking a reduction of his sentence, in which he argues that extraordinary and compelling reasons support compassionate release. Dkts. 185, Dkt. 191. The Court will deny the motions because a defendant may not use a compassionate release motion to challenge the validity of his sentence.

Defendant argues that intervening change in the law between the time of his guilty plea and his sentencing created a substantial disparity in his sentence, which demands compassionate release. Defendant cites *United States v. Norman*, 935 F.3d 232, 239 (4th Cir. 2019), wherein the Fourth Circuit held that a "conspiracy" conviction under 21 U.S.C. § 846 does not qualify as a "controlled substance offense" under U.S.S.G. §§ 4B1.1 and 1.2. Dkt. 191 at 3. In Defendant's view, because of *Norman*, he would not qualify as a career offender either at the time of sentencing or today, and he did not benefit from the change in law that occurred between his guilty plea and his sentencing. *Id.* at 4.

Defendant's argument fails. The Fourth Circuit recently held that a defendant "cannot challenge the validity of his convictions and sentence through a compassionate release motion."

*United States v. Ferguson*, 55 F.4th 262, 265 (4th Cir. 2022).<sup>1</sup> A defendant’s “challenge to his original sentence is not properly brought as part of a compassionate release motion. . . . sentencing errors are addressed through objections to the PSR, direct appeals, and habeas petitions, not compassionate release motions.” *United States v. Dillman*, No. 5:11-cr-00044, 2021 WL 3083034, at \*8 (W.D. Va. July 21, 2021). As this case presents a quintessential challenge to the validity of the defendant’s original sentence, *Ferguson* precludes Defendant from moving for a sentence reduction on this theory through a compassionate release motion, 18 U.S.C. § 3581(c)(1)(A). As in *Ferguson*, Defendant argues (as he must) that his “Guidelines range was calculated incorrectly” *at the time of his sentencing*. See 55 F.4th at 266; Dkt. 191 at 4. That is because *Norman*—the precedent he relies on to argue that he should not have been considered a career offender under the Guidelines—was issued *before* he was sentenced.<sup>2</sup> Accordingly, “[b]ecause § 2255 is the exclusive method of collaterally attacking a federal conviction or sentence, a criminal defendant is foreclosed from the use of another mechanism, such as compassionate release, to sidestep § 2255’s requirements.” *Ferguson*, 55 F.4th at 270.

Defendant also argues that § 3553(a) factors support a sentence reduction. He has been in federal custody since being arrested on January 25, 2019, having served around 48 months,

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<sup>1</sup> Defendant’s motions were filed before *Ferguson*, and at that point courts within the Fourth Circuit had found they “may consider changes in sentencing law—even nonretroactive ones—in assessing whether a defendant has shown extraordinary and compelling reasons warrant a reduction in his sentence.” *United States v. Stuart*, No. 5:92-CR-114-BR-3, 2020 WL 7232074, at \*3 (E.D.N.C. Dec. 8, 2020). Now, after *Ferguson*, the Court recognizes that, unlike in *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020), defendants cannot argue that “a change in the sentencing law that occurred *after* their sentencings (but did not apply retroactively) merited a reduction in their sentences to conform to the change.” *Ferguson*, 55 F.4th at 271 (citing *McCoy*, 981 F.3d at 275) (emphasis added).

<sup>2</sup> The Fourth Circuit issued *Norman* on August 15, 2019, while Defendant was sentenced on February 28, 2020. Dkt. 120.

which is around 36% of his total 132-month sentence. He asserts that “[t]he need for the sentence to provide just punishment is diminished, as the career offender enhancement increased his sentence to around 270% of what he should have received under *Norman*.” Dkt. 191 at 7. He has not had any disciplinary infractions and has maintained constant, gainful employment during his incarceration. *Id.* (citing Ex. 1, BOP Record at 1, 2). Further, Defendant argues that “[g]ood conduct and responsible behavior demonstrate that he has taken meaningful steps to self-reform and is not a danger to the community.” *Id.*

He asserts that the nature and circumstances of his underlying offense weigh against incarceration. *Id.* at 8. He was incarcerated for a non-violent drug charge after having been “exposed to controlled substance[s] at a very young age, and [he] did not have the resources to overcome addiction.” *Id.* at 8 (citing Dkt. 88 (“PSR”) at 21). At age thirteen, Defendant was exposed to marijuana. *Id.* He used cocaine in his twenties. *Id.* (citing PSR at 21). Though he attended a Virginia Safety Action Program around 2009, he has not received other drug treatment or training in the last decade. *Id.* (citing PSR at 22). He argues that he could accomplish more outside prison, going to private therapy and obtaining employment that would help him provide for his children. *Id.*<sup>3</sup> These reasons do not qualify as extraordinary and compelling circumstances justifying compassionate release.

For these reasons, Defendant’s motions for a reduction in sentence are hereby **DENIED**. Dkts. 185, 191.

The Clerk of the Court is hereby directed to send this Memorandum Opinion and Order to all counsel of record.

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<sup>3</sup> Defendant previously sought compassionate release in part because of the need to care for his daughter, whose mother was also set to be incarcerated. Dkt. 160 at 3–4.

Entered this 26th day of January, 2023.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE